

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 13747 of 2004

Between:

1. N.V. Rama Krishna Murthy, S/o Late N. Varada Raju, Advocate
1-1-380/24, Ashok Nagar Extn, Hyderabad - 500 020.

2. I.V.S. Rao, s/o Late I.V.L.N. Rao, Advocate,
501, Doshi Crest Apartments, Hyderguda,
Hyderabad - 500 029.

..... PETITIONERS.

AND

1. The Union of India, Rep. by the Secretary,
Ministry of Finance, North Block, New Delhi - 110 011.
2. The Union of India, Rep. by the Secretary,
Ministry of Law, Justice and Company Affairs, Sastry Bhavan, New Delhi - 110 011.
3. The State of Andhra Pradesh. Rep. by Principal Secretary,
Revenue Secretariat Buildings, Hyderabad - 500 022.
4. The Debts Recovery Tribunal, Andhra Pradesh, Hyderabad Bench, Represented
by the Presiding Officer,
5th Floor, Triveni Complex, Abids, Hyderabad - 500 001.
5. The Debts Recovery Tribunal, Andhra Pradesh, Visakhapatnam Bench, Rep. by
the Presiding Officer, 3rd Floor, Isnar Khajana Towers, Dwaraka Nagaram,
Visakhapatnam - 520 016.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a Writ of Mandamus or any other appropriate writ, to declare Sec. 14 of SARFESI Act 2002, as unconstitutional, ultravires, unenforceable and invalid for excluding judicial review which is a basic feature of the Constitution and excluding principles of natural justice inherent in Article 14 of the Constitution of India, and being beyond the legislative competence of Parliament to enact per force of law declared by the Hon'ble Apex Court in (1) Minerva Mills vide A.I.R. 1980 S.C. 1789; (2) A.R. Antulay vide A.I.R. 1988 S.C. 1531 read with Largest Bench decision in the case of Kesavananda Bharati Sripadagaluvuru versus State of Kerala vide AIR 1973 S.C. 1461 , and issue requisite guidelines to respondents (3) and (4) to prohibit Chief Metropolitan Magistrates and District Magistrates in the State from exercising any power under the ultravires Section 14 of SARFESI Act 2002, while directing 5th and 6th respondents to exercise powers to stay or quash any orders passed under Section 14 of SARFESI Act, 2002, by any Chief Metropolitan Magistrate or District Magistrate.

For the Petitioner: Mr.I.V.S.Rao, Advocate,

Party-in-person

For the Respondents 1&2: Mr.A.Rajasekhar

Reddy, SC for CG.

Counsel for Respondent No.3: G.P. for Revenue

Counsel for Respondents 4&5: None present.

The Court made the following :

ORAL ORDER:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

This Writ Petition has been filed as Public Interest Litigation by two Advocates questioning the vires of Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which the petitioners have described in the entire Writ Petition as "SARFESI Act,2002". Challenge is only theoretical without bringing to notice of the Court any concrete case. Challenge is on the ground that judicial review has been excluded against an order to be passed under Section 14 of the Act, therefore, the same be declared as ultra vires, and, during pendency of the writ petition, proceedings pending before the Chief Metropolitan Magistrates and District Magistrates all over the State be stayed.

We are not inclined to entertain such a petition filed as Public Interest Litigation and exercise the powers under Article 226 of the Constitution of India, in which only hypothetical questions have been raised. Any person aggrieved against an order passed under Section 14 of the Act can seek redressal in accordance with law.

The Writ Petition is, therefore, dismissed. No costs.

DEVINDER GUPTA, C.J.

11.8.2004.

VR _____

C.V.RAMULU, J.

Note:

Issue cc by tomorrow.

(BO)

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To

1. The Secretary, Ministry of Finance, Union of India, North Block, New Delhi - 110 011.
2. The Secretary, Ministry of Law, Justice and Company Affairs, Union of India, Sastry Bhavan, New Delhi - 110 011.
3. The Principal Secretary to Government of Andhra Pradesh, Revenue, Secretariat Buildings, Hyderabad - 500 022.
4. The Presiding Officer, Debts Recovery Tribunal, Andhra Pradesh, Hyderabad Bench, 5th Floor, Triveni Complex, Abids, Hyderabad - 500 001.
5. The Presiding Officer, Debts Recovery Tribunal, Andhra Pradesh, Visakhapatnam Bench, 3rd Floor, Isnar Khajana Towers, Dwaraka Nagaram, Visakhapatnam - 520 016.
6. Two CCs to Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).
7. Two CD copies.